

UNION EXPLORATION PARTNERS, LTD.

IBLA 88-293

Decided December 4, 1989

Appeal from a decision of the Deputy Director, Minerals Management Service, affirming order assessing late payment interest charges. MMS 87-0314-OCS.

Affirmed.

1. Oil and Gas Leases: Royalties: Interest--Payments: Generally

MMS properly assessed late payment interest charges where a late royalty payment was made by an oil and gas lessee's bank using electronic funds transfer 1 day after payment was due.

APPEARANCES: Deborah K. Cornett, Esq., for appellant; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Union Exploration Partners, Ltd., through its managing general partner, Union Oil Company of California (Union), has appealed a decision of the Deputy Director, Minerals Management Service (MMS), upholding Bill of Collection No. 10600501 dated April 3, 1987. Pertinent to this appeal, the decision assessed \$3,194.13 in late payment interest charges. The late payment charges so assessed were attributable to MMS' receipt of royalties on July 3, 1984, which had become due on July 2, 1984.

On July 2, 1984, Union attempted to wire by electronic funds transfer (EFT) two royalty payments in the amounts of \$10,559,993.89 and \$1,182,273.27 using the Federal Reserve Communications System (FRCS) link to the Treasury Financial Communications System (TFCS). Both transfers were handled by the Northern Trust Company (Northern Trust). A document entitled "Northern Trust Cashline Money Transfer Recap Report" (Exh. 7 to Union's Statement of Reasons (SOR)) for July 2, 1984, indicates that Union requested the wire transfers at 10:18 a.m. central time on July 2, 1984; M.W. Coen, presumably a Union employee, was the "Caller," and "S.H. Nosler," probably another Union employee, had "Approved" the money transfer. There is no allegation that the money transfer request did not contain all the information necessary for proper coding of the wire transfers.

Another bank document furnished by Union with the SOR entitled "Union Oil Co of California Northern Trust Company Cashline Balance Reporting Multibank Report Balances Reported As Of 7/02/84" shows that Union's account was debited on July 2, 1984. Neither of the Northern Trust reports shows the time when the debit was made from Union's account or the EFT was sent by Northern Trust. MMS received payment by EFT via FRCS on July 3, 1984, as shown on the MMS confirmation report of receipt of the wire transfer.

Union acknowledges MMS' authority to assess late payment interest charges on payments not received by the due date and does not dispute that payment was received a day late. Nonetheless, Union argues that MMS' assessment authority has been applied inappropriately in this case (SOR at 4). Union therefore contends that the doctrine announced in James B. Pauley, 53 IBLA 1 (1981), and upon which MMS relies, has no application in this case.

Pauley established that one who chooses the means of delivery of a document must accept responsibility for consequent delay or nondelivery. Under the applicable July 1984 regulations, Union asserts "it did not choose the means of delivery of its royalty payments; instead, MMS 'required' Union to remit payment by EFT" (SOR at 4, emphasis in original). Union contends "the Pauley case is inapposite and any assessment rendered on the basis that Union had to bear the consequences of delay incurred through no fault of its own when the MMS required the method of payment utilized would clearly be inequitable and violate Union's rights to 'due process.'" Id.

Additionally, Union argues that regulations promulgated by MMS and published in the Federal Register in 1983 and 1984 provided that payors would not be held responsible for late payments resulting from actions beyond their control, including a mechanical or systems failure of FRCS or TFCS, so long as the information was coded correctly (SOR at 5). Because the proper information was provided to Northern Trust by 10:18 a.m. central time on July 2, 1984, Union contends it should not have to bear the consequences of delay inasmuch as it then maintained no further control over the wire transfer. Id.

Responding to Union, MMS states that it determined the funds in question were transferred 1 day late due to action taken by Union's agent, Northern Trust (MMS' Answer to appellant's SOR at 3). MMS' records show that the computer system on which MMS receives EFT was operational on July 2, but does not show that Union's bank attempted to transfer the royalty payments to MMS on July 2, 1984. Disputing Union's contention that late payment was beyond its control, MMS points out that Union chose Northern Trust as its agent and has not shown that the delay in transferring payments was caused by circumstances beyond the bank's control (Answer at 3).

[1] Although Union's account was debited on July 2, 1984, appellant does not dispute that its bank failed to transfer payment until July 3, 1984. Nor does appellant allege that payment was late because of a failure

of FRCS or TFCS. Union was required to make payment of royalties by EFT by Departmental regulation providing pertinently that:

All payors * * * must make payment by electronic funds transfer (EFT), through the Federal Reserve Communications System (FRCS) link to the Treasury Financial Communications System (TFCS), unless otherwise directed by the Secretary. Early payment prior to payment due date of all or a portion of the \$50,000 or more aggregated royalty liability is permitted, but the payment must be made by EFT.

30 CFR 218.155(a)(1).

Appellant's conclusion that MMS chose the method of payment by requiring that payment be made by EFT using FRCS link to TFCS, is not correct. Although MMS requires payment by EFT, the bank which will be used to transfer payment to MMS by such means is selected by the lessee. Union's designated bank in this case was Northern Trust. Union, having selected Northern Trust to act on its behalf, properly bears the consequences of the bank's action or inaction in transmitting funds to MMS by the specified means. James B. Pauley, supra.

The existence of viable alternative modes of delivery was the key to our holding in James B. Pauley; that is, Pauley could have chosen other carriers beside the U.S. Postal Service to file his location notices. By selecting the post office, he designated that agency to be his agent for purpose of delivery. Here, while MMS required payment be made by EFT, MMS did not select the payor's bank. Having selected its own bank to make the transfers, Union bears the responsibility for the manner in which Northern Trust handled Union's EFT, just as Pauley was responsible for the manner in which the Postal Service handled his letter.

In support of the argument that it should not pay late payment charges in this case, Union cites the following language contained in the "Supple-mentary Information" section of the preamble to 30 CFR 218.155 (1984): "Payors will not be held responsible for late payments resulting from actions beyond their control including mechanical or systems failure of the FRCS or TFCS. However, late payments resulting from payor's action, such as improper coding instructions given to the bank to authorize EFT, will be the payor's responsibility." 49 FR 8602 (Mar. 8, 1984).

The focus of this statement, however, is clarified by MMS' response printed in the "General Comments" on the final rule appearing at 49 FR 8602 (Mar. 8, 1984). Therein it was reported that commentators

expressed concern that the payor will not receive positive con-firmation showing that the MMS has received the EFT payment and that the payment will not be properly credited to the payor's account. Of particular concern was the fear that leases might be cancelled for failure to make proper rental payments, due to

some inadvertent error. Also of concern was the possibility that, in the case of lease offerings, a successful high bid could be rejected due to an EFT payment error.

Responding to this expression of doubt, MMS explained why there was no cause for concern on this account:

The MMS recognizes these concerns and has taken steps to prevent potential problems. The MMS Accounting Center will notify the appropriate OCS regional office of receipt of all EFT bonus (four-fifths) and first year rental payments on the same business day of receipt. When MMS records indicate that payment has not been received by the due date, MMS will notify the bidder. A 2-day grace period is provided for completing the payment. Late payment charges and penalties will be assessed, however, if it is determined that the delay is the payor's fault or the fault of the payor's bank (agent).

49 FR 8602, 8603 (Mar. 8, 1984).

Subparagraph (c) of 30 CFR 218.155 (1984) is the only section of the regulation that deals expressly with this issue and then only in the context of the "payment of the four-fifths bonus bid amount and the first year's rental." Subparagraph (c) provides that "payors will not be held responsible for late payment due to actions beyond their control, such as mechanical or systems failure of FRCS or TFCS. Payors will be held responsible for incorrect actions of their bank which result in late payments." Therefore, 30 CFR 218.155(c) lacks direct application to this case. But even if it could be applied here, Union's argument, which overlooks the role played by its banking agent, must be rejected because there has been no showing made that the late payments of royalty were caused by a "mechanical or systems" failure.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge